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88-852

Supreme Court, U.S.
FILED
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NO. .....

IN THE SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1988

ROBERT E. HOOKER
and SHIRLEY K. HOOKER,

APPELLANTS

v.

UNITED STATES OF AMERICA,

APPELLEE

ON APPEAL FROM THE NINTH CIRCUIT COURT OF APPEALS

JURISDICTIONAL STATEMENT

Robert E. Hooker *
Shirley K. Hooker
Post Office Box 667
Caldwell, Ida. 83606
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* Propria Persona
Counsel of Record

13 R

QUESTION PRESENTED

1. Why are not the rights of bona fide citizens, husband and wife, to their property and privacy upheld by the United States of America when the U.S.A.'s representatives, Internal Revenue Service and the United States Postal Service, not only thwart but also negate those rights?

NO. _____

IN THE SUPREME COURT

OF THE

E

UNITED STATES

LIST OF ALL PARTIES

ROBERT E. HOOKER, SHIRLEY K. HOOKER, jointly,

APPELLANTS

v.

UNITED STATES OF AMERICA, representative and responsible for INTERNAL REVENUE SERIVICE and UNITED STATES POSTAL SERVICE,

APPELLEE

TABLE OF CONTENTS

	PAGE
QUESTION PRESENTED	1
LIST OF ALL PARTIES	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	iv
OPINION BELOW	1
JURISDICTION	1
STATEMENT OF THE CASE	4-9
CONCLUSION	10
APPENDIX	App. 1-5

TABLE OF AUTHORITIES

CASES	PAGE(S)
First English Evangelical Lutheran Church of Glendale v. County of Los Angeles 107 S. Ct. 2378 (1987)	2-3
Frisby, et al v. Schultz and Braun, ____S. Ct. _____ (1988)	2-3
Houston v. United States (DC-Mich. G86-937 CA-5 1988).	App 3
Mid-South Music Corporation v. United States (DC-Tenn. 1985).	4
Nollan v. California Coastal Commission 107 S. Ct. 3141 (1987).	2-3

IN THE UNITED STATES SUPREME COURT

HOOKER, HOOKER,

Appellants, NO.

v.

UNITED STATES OF AMERICA,

Appellee

TYPEWRITTEN SUBMISSION — No Oral Argument Due to Expense for Appellants

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OPINION BELOW

The Opinion of the Ninth Circuit Court of July 27, 1988, Appeals was to dismiss the case without comment (CA [redacted] 86-4322) and on August 11, 1986, a three-judge panel of the Ninth Circuit was to deny the Appellants a rehearing of the issues.

JURISDICTION

The Ninth Circuit Court of Appeals in its Judgment July 27, 1988, of Civil No. 86-4322 could not possibly have received our Appellant mailing of July 28, 1988 for consideration of three (3) U.S. Supreme Court opinion syllabuses upholding property rights and compensation and rights of privacy. These U.S. [redacted] Supreme

Court opinions ignored by the Ninth (9th) Circuit — and in its "rubber stamp" denial of the Plaintiff Rehearing Petition August 11, 1988 — are:

First English Evangelical Lutheran Church of Glendale

v.

County of Los Angeles

Property Compensation

107 S.Ct. 2378 — Opinion June 9, 1987

Nollan

v.

California Coastal Commission

Property Compensation

107 S.Ct. 3141 — Opinion June 26, 1987

Frisby, et al

v.

Schultz and Braun

Privacy Rights

— Opinion June 27, 1988

In First English Evangelical, the U.S. Supreme Court ruled that a property owner is entitled to payment when use regulations deny all reasonable use. In Nollan, the U.S. Supreme Court again ruled that a property owner should be compensated when government interferes with the use of property.

The Just Compensation Clause of the Fifth (5th) Amendment of the U.S. Constitution must be invoked when government does not adhere to the regulations of the Taking Clause (both First English Evangelical and Nollan).

In Frisby, the U.S. Supreme Court recognized the Rights of Privacy taking precedence and being supreme even above the guarantees of Free Speech of the First (1st) Amendment.

Collectively, First English Evangelical, Nollan and Frisby present the logical axiom:"One's castle is his/her home, property and privacy."

The Ninth (9th) Circuit also has not recognized:

— Amendment IV (4) of the U.S. Constitution: Right of seizure regulated.

— Amendment V (5) of the U.S. Constitution: No

Person shall be deprived of liberty or property without due process.

— Amendment XIV (14) of the U.S. Constitution: Citizenship rights are not to be abridged.

— The Privacy Act of 1974.

Moreover, the Ninth (9th) Circuit Court also ignored Mid-South Music Corporation (DC-Tenn) Opinion of April 26, 1985. That opinion held Internal Revenue Service (IRS) liable in a civil action for its transgressions and whims waging a vendetta, thus IRS having to pay extensive monetary damages for violations against confidentiality and privacy.

STATEMENT OF THE CASE

LOSS OF PROPERTY (Wrongful Appropriation) and LOSS OF PRIVACY:

301 Checks and 193 Receipts from an 1982-83 audit were declared "Lost—Can't Be Found" by William M. Jacobs, then Director, and Carol Hansen, Auditor, of IRS, Boise, Idaho, branch; and Gil L. Hicks, Postmaster, United States Postal Service (USPS), Boise, Idaho, between October 15, 1984, and March 1, 1985, and

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which remain missing to this day.

It is to be noted that IRS of Boise and Ogden, Utah, in the 19 tax years inclusive between 1969-1987 have waged 11 audits and the State of Idaho three (3) audits against the Appellants. Other than my occupational job, I am forced to spend more time gathering records and papers for IRS and Idaho than any other activity because of this continuing vendetta. I am bound and determined to stop it once and for all, even though I will never buy their friendship.

We as Appellants have contended through the U.S. District Court of Idaho and the Ninth (9th) Circuit) that we temporarilygave IRS of Boise our 301 checks and 193 receipts for its audit — but the Plaintiff-Appellant was explicit before mailing our said property to Jacobs and Hansen that we demanded they return it in its same proper condition. That property never was returned by IRS of Boise and USPS in their joint failure to meet their burden of responsibility.

The Ninth (9th) Circuit and the U.S. District Court of Idaho, in its original handling of this civil action, have not considered that the Appellants exhausted all

means to recover their property of 301 checks and 193 receipts — while IRS of Boise and the USPS of Boise stood on their figurative hands and did nothing -- but to no avail. The Appellants ran tracers to recover the property between October, 1984, and March, 1985, when IRS' brazen attitude and indifference was surfacing, to wit:

On January 9, 1985, the [redacted] Appellant kept an audit appointment at the Boise IRS office -- despite a heavy snowstorm and cold during the 70-mile round-trip— and was told by AUDITOR Supervisor Mona Lynn of IRS:

"Oh, that box (orange box that we had mailed the checks and receipts in) is lost (after the IRS audit had been completed, the Court is informed) — we quit looking for it."

PRIVACY/CONFIDENTIALITY & TORT CLAIM

The mere fact of IRS' declaration that the property was lost means that the Appellants' personal privacy and confidentiality in their property has since been violated since it is not in our possession.

The Appellants also completed a 1986 Tort Claim and soon after an Amended Tort Claim, on a form supplied

by the U.S. Government for Property and Privacy and Confidentiality Damages. The Amended Tort Claim (see Appendix) was filed June 11, 1986, with the Clerk's Office of the U.S. District Court of Idaho.

Boise IRS could not explain — and never has since after numerous phone calls and letter questioning — why then-Director Jacobs and U.S. Senator James A. McClure of Idaho "teamed up" later in January, 1985, and jointly sent me 494 Xeroxes of the 301 checks and 193 receipts. Just the day I received them, I sent the Xeroxes to McClure's Idaho home in Payette and wrote him a stern letter of my refusal to accept them.

We don't want Xeroxes of personal, private property floating about, too, along with our original checks and receipts to places unbeknown had the Xeroxes also become lost.

We want the original checks and receipts back — PERIOD! McClure appears as dense as Boise IRS when I have said what I want back! Xeroxes of original checks and receipts do not suffice and are unacceptable — they do not replace the property that is rightfully private and confidential to us.

If Boise IRS and USPS can't meet their obligations and burdens of responsibility, then Property Compensation (First English Evangelical and Nollan) are in order as well as Punitive Damages. Or if the coy, non-communicative Boise IRS has been playing its version of "hide-and-seek" (it keeps telling me from time to time of its green certified mailing card it has that it mailed the checks and receipts back to me — but Boise IRS never has shown me such a mailing card) suddenly now at this point in time decides to give us back our property from its "hide-and-seek" game, we will welcome the property's return plus a delay-keeping monetary settlement less than our Damages sought in this Jurisdictional Statement.

Neither Jacobs nor McClure — or anyone else in Boise IRS or in McClure's office, for that matter — have ever explained where the Xeroxes of the checks and receipts came from. Had Boise IRS the time to make Xeroxes from its first Xeroxes? To waste the public's tax dollars? To continue its audit-audit-audit, etc., and vendetta against Bob Hooker?

Boise IRS, too, has been awe-struck and non-communicative to these questions I have raised in 57

letters to it and U.S. Senators in nearly four (4) full years:

Are the originals locked up in the Boise IRS office (for vendetta purposes)? Were the originals pitched out in its Twinkie Wrapper barrel of trash? Were the originals sent to Caldwell, Kan.? Or to Caldwell, Ga.? Or to Caldwell, N.J. Or to Bakersfield, Calif.? Or to Bend, Ore.? Or to Bellingham, Wash.? Or to Bonners Ferry, Idaho? Or to Bozeman, Mont.? Or to Beatrice, Neb.? Or to Beaumont, Tex.? Or to Baton Rouge, La.? To Biloxi, Miss.? To Baltimore? To Boston? To Bangor, Me.?

All my words have fallen on indifferent ears (in meetings head-to-head at the Boise IRS office) and eyes (letters to Boise IRS and U.S. Senators). Boise IRS and and U.S. Postal Service have been most unfit and incompetent in caring for this property. They are negligent. Both must take responsibility and not shirk their burden.

Wrongful appropriation has occurred in that the Defendant, the United States of America in being responsible for the actions of its agencies, has dispensed of property without the right to own.

CONCLUSION — MONETARY DAMAGES

Therefore, the Appellants ask Monetary Comepnsation, in consideration of First English Evangelical, Nollan, Frisby, et al and Mid-South Music Corpoeration, United States law and the U.S. Constitution, in mind, of:

General Damages — Eight Thousand Seven Hundred Seventy-Six Dollars and Thirty-Eight Cents ($8,776.38) from the amount of the 301 checks and 193 receipts the Appellant added before mailing to Boise IRS;

And Privacy and Confidentiality Violation Damages — Two Million Dollars ($2,000,000.00).

Thank You for Your Kind Consideration.

Robert E. Hooker
Appellant
Shirley K. Hooker
appellant
October 27, 1988

APPENDIX CONTENTS

	App. Page
Progress of Hooker v. USA Civil Action	1
Proof of Appellants' Mailing and IRS' Acceptance of Checks and Receipts September 24, 1984, for Tax Audit	2
IRS' Paper Work Tactics Invalid, "Slipshod" in Houston v. USA DC-Mich. 1988	3
Appellants' Complying with U.S. Government Tort Claim	3
Appellants' Letter to U.S. Solicitor General Telling U.S. Government We Are Not Ordering Any Transcripts, Records or Court Material	4
Order of U.S. District Court of Idaho	5-8
Judgment of U.S. District Court of Idaho	9
Order of Ninth Circuit Court of Appeals	10
Judgment of Ninth Circuit Court of Appeals	11-16
Certificate of Mailing in Federal Civil Action of All This Enclosure	17

Progress, "Trail" of Hooker v. USA Divil Action

UNITED STATES DISTRICT COURT OF IDAHO

Our Plaintiff Filing, Paying of Fee — May 27, 1986;

Docket No. Assigned — 86-1171

Amended Tort Claim (required by U.S. Government) Filing — June 11, 1986

Civil Action Dismissed by Court — October 24, 1986

Rehearing Petition Dismissed by Court — October 30, 1986

NINTH (9th) CIRCUIT COURT OF APPEALS

Our Plaintiff-Appellant Filing, Paying of Fee — November 6, 1986

Docket No. Assigned — 86-4322

Timely Court Rulings, Opinions in 1987 and 1988 — Either 1 or 2 Mailings

Civil Action Dismissed by Court — July 27, 1988

Plaintiff-Appellant Mailing of Three (3) U.S. Supreme Court Opinions — July 28, 1988 (which crossed in mail during Ninth (9th) Circuit's Mailing of Its Dismissal

Plaintiff-Appellant Filing of Rehearing Petion — August 2, 1988

Rehearing Petition Dismissed by Court — August 11, 1988

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1. ☐ Show to whom, date and address of delivery.
2. ☐ Restricted Delivery.

3. Article Addressed to:
I.R.S.
Attn.: Wm. M. Jacobs
550 W. Fort - Box 041
Boise, Ida. 83724

4. Type of Service:
☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail

Article Number
P 610 189 680

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature – Addressee
X

6. Signature – Agent
X Barbara Isaacs

7. Date of Delivery
SEP 9 1984

8. Addressee's Address (ONLY if requested and fee paid)

Form 3811, July 1983 DOMESTIC RETURN RECEIPT

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS
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Complete items 1, 2, 3, and 4 on the reverse.
Attach to front of article if space permits, otherwise affix to back of article.
Endorse article "Return Receipt Requested" adjacent to number.

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Robert E. Hooker
P.O. Box 667
Caldwell, Ida. 83606
(Name of Sender)
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(City, State, and ZIP Code)

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App. 2

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IRS PAPER WORK, TACTICS

INVALID, "SLIPSHOD"

Houston v. United States (DC-Mich. G86-937 CA 5 March 29, 1988) is applicable in Hooker v. United States. It was ruled in Houston v. United States that the Internal Revenue Service (IRS) paper work and also the tactics were invalid, violating law, and "not only neglectful, but slipshod."

GOVERNMENTAL TORT CLAIM

As Appellants, we completed the U.S. Government Tort Claim upon notice by Boise IRS that our 301 checks and 193 receipts were "Lost--Can't Be Found." From the list of checks and receipts I made before mailing by Certified Mail to Boise IRS' William M. Jacobsx and Carol Hansen, I put on the Tort Claim General Damages of $8,776.38 and Personal Damages of $2,000,000.00 for Violation of Confidentiality and Privacy.

U.S. Supreme Court Civil No.
Propria Persona -- Hooker v. United States of America
Appellant Letter Telling U.S. Government That the
Appellant is Not Ordering Any Transcripts, Records
or Court Materials

Robert E. "Bob" Hooker
Propria Persona
P.O. Box 667
Caldwell, Idaho 83606
Tel: (208) 459-0285

U.S. Solicitor General
Washington, D.C. 20530

October 27, 1988

Dear Sir:

As Appellant to the United States Supreme Court, I have not ordered any material and am not ordering any material of Transcripts, Records or Court Material from the U.S. District Court of Idaho, the Ninth (9th) Circuit Court of Appeals and or the United States Supreme Court for ourselves -- wife Shirley K. Hooker -- as Appellants.

Sincerely Yours
Robert E. "Bob" Hooker

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

ROBERT E. HOOKER
SHIRLEY K. HOOKER PLAINTIFFS

v. Civil Action No. 86-1171

UNITED STATES OF AMERICA DEFENDANT

ORDER

This matter comes before the court on the Defendant States' Motion to Dismiss the Complaint of plaintiffs. Plaintiffs provided original bank checks and receipts to the Internal Revenue Service (IRS) for purposes of a tax audit. In October of 1984, plaintiffs sought the return of these records from the IRS and alleged that they were informed by the IRS that the original records had been lost. The IRS then furnished plaintiffs with Xerox copies of the records.

On May 27, 1986, plaintiffs filed a Complaint with this court seeking award of generaland personal damages against the United States "for wrongful conversion and appropriation of property." Plaintiffs filed an Amended Complaint on June 12, 1986, seeking property damages

and damages for personal injury for violation of privacy and confidentiality. On August 8, 1986, plaintiffs filed a Motion to Calendar for Trial and in Opposition to Motion to Dismiss. Considering these pleadings together, it appears the plaintiffs are asserting a claim under Title 26 of the United States Code for the unauthorized disclosure of tax return information. Plaintiffs are also apparently alleging common law torts were committed by the United States against them in connection with the alleged loss of the original checks and receipts.

DISCUSSION

A. Unlawful Disclosure of Tax Return Information

Plaintiffs allege that there has been a violation of their "privacy and confidentiality" as a result of the failure of the IRS to return plaintiffs' tax return information to them. Title 26 U.S.C. #6103 provides that all returns and return information shall be confidential except as expressly authorized in Title 26. Title 26 #7431 authorizes taxpayers to bring civil actions for damages against the United States for unauthorized disclosure of returns and return information. Section (b) of this Act provides that "no liability

shall arise under this section with respect to any disclosure which results from a good faith, but erroneous, interpretation of section 6103."

Construing these pro se plaintiffs' Complaints in a light most favorable to them, the court can find no allegation by plaintiffs that the IRS has made a disclosure of their checks or receipts to any individual or entity. Plaintiffs have merely alleged that the IRS informed them that the original checks and receipts were lost. There is simply nothing from the pleadings that would indicate that disclosurewas made to an unauthorized third party. Even if the court were to find that an unlawful disclosure was made after the IRS lost the tax information, plaintiffs have not alleged bad faith on the part of IRS as required by 26 U.S.C. #7431(b). See also Davidson v. Brady, 732 F.2d 552 (6th Cir. 1984).

B. Common Law Torts

Plaintiffs also allege that there has been "a wrongful conversion and appropriation of property" by the IRS. When the plaintiffs allege the commission of common law torts by the United States, the Federal Tort Claims Act, 28 U.S.C. # 2671, et. seq., provides exclusive remedy for the recovery of damages caused.

Title 28 U.S.C. #2680 provides exceptions to liability under the Federal Tort Claims Act. Part (c) of Section 2680 excepts liability for "any claim arising in respect of the assessment or collection of any tax or customs duty. . . ." This phrase has been construed liberally by the courts to preclude judicial interference with any phase of IRS activities. See Capozzoli v. Tracey, 663 F.2d 654 (5th Cir. 1981). In the instant case, it is clear that the use of tax information for the purposes of an audit is an activity in connection with the assessment and collection of taxes. Plaintiffs' claim for commission of common law torts by the United States must be dismissed.

Based upon the foregoing and the court being fully advised in the premises,

IT IS HEREBY ORDERED that the defendant's Motion to Dismiss should bem and is hereby, GRANTED. The plaintiffs' Complaint is hereby DISMISSED.

DATED this 24th day of October, 1986.

HAROLD L. RYAN

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

ROBERT E. HOOKER
SHIRLEY K. HOOKER — PLAINTIFFS

v. — Civil Action No. 86-1171

UNITED STATES OF AMERICA — DEFENDANT

JUDGMENT

Based x upon the court's Order entered October 24, 1986, and the court being fully advised in the premises,

IT IS HEREBY ORDERED that judgment is entered in favor of the defendant.

DATED this 24th day of October, 1986.

HAROLD L. RYAN

UNITED STATES DISTRICT JUDGE

IN THE NINTH CIRCUIT COURT OF APPEALS

ROBERT E. HOOKER
SHIRLEY K. HOOKER — APPELLANTS

V. — Civil Action No. 86-4322

UNITED STATES OF AMERICA — APPELLEE

ORDER

Before: FLETCHER, REINHARDT and BRUNETTI, Circuit Judges:

Appellants' petition for rehearing is denied.

FILED

Cathy A. Catterson, Clerk
U.S. Court of Appeals
August 11, 1988

IN THE NINTH CIRCUIT COURT OF APPEALS

ROBERT E. HOOKER
SHIRLEY K. HOOKER — APPELLANTS

v. — Civil Action No. 86-4322

UNITED STATES OF AMERICA — APPELLEE

JUDGMENT

Before: FLETCHER, REINHARDT and BRUNETTI, Circuit Judges:

Taxpayer/appellant appeals pro se from the district court's dismissal of his complaint which sought award of general and personal damages against the United States "for wrongful conversion and appropriation of property" and for violation of privacy and confidentiality.

The appellants' cause of action arose when in the course of a tax audit, appellant provided the Internal Revenue Service (IRS) with original bank checks and receipts. When appellant sought return of those records, IRS informed him that the originals had been lost. The IRS furnished appellant with reprographic copies of those records.

The district construed appellants' less than artfully crafted complaint to be an action under the

Federal Tort Claims Act (FTCA), 28 U.S.C. #2671 et. seq. as to the conversion claim and as an action under the Internal Revenue Code, 26 U.S.C. #6103, 7431, as to the privacy/confidentiality claim.

The district court dismissed the appellants' conversion claim for lack of subject matter jurisdiction and dismissed the privacy/confidentiality cause for failure to state a claim upon which relief may be granted. We affirm.

The FTCA vests in the United States Government the potential to be liable for tort claims to the same extent private individuals would be. However, Congress carved out specific exceptions to the United States' liability including claims concerning postal deliveries and those concerning tax collection. 28 U.S.C. #2680 (b), (c).

To the extent that appellants' claim lays blame for the loss of his records at the United States Postal Service and as he expressly blames the Internal Revenue Service, both exception sections of the FTCA bar appellants' claims. In Capozzoli v. Tracy, 663 F. 2d 654 (5th Cir. 1981), the taxpayers alleged that an IRS agent assigned to investigate a casualty loss claim,

without prior notice or permission, proceeded to photograph the taxpayers' residence and prowled around the property. The Fifth Circuit held that "28 U.S.C. #2680 (c) reflects the government's strong interest in protecting the administration of its tax system from the burden of constant litigation. This interest would be completely frustrated if we were to read Section #2680 (c) as providing an immunity for only certain narrowly defined activities of the IRS." Id. at 657. The court added that "Congress retained the United States' sovereign immunity for any claim in respect of the assessment or collection of taxes. This language is broad enough to encompass any activities of an IRS agent even remotely related to his or her official duties." Id. at 658. If taking a picture of a residence is barred by Section #2680 (c), then certainly losing checks and receipts, which are the basis for a tax return audit, is clearly within the immunity afforded by that section.

In Morris v. United States, 521 F.2d 872 (9th Cir. 1975), we also applied the #2680 (c) immunity provision. In Morris, the IRS allegedly harassed and intimidated the taxpayer and his wife on several occasions and unlawfully seized and levied on property belonging to

them. We held that "even assuming arguendo that the Internal Revenue agents' collection activity was beyond the normal scope of authority and amounted to tortious conduct, we find that the claims fall squarely within the exempted group of tort claims arising out of the tax collection efforts." Id. at 874. The Hookers' claims, too, fall squarely within the exempted group of claims arising out of the tax collection process. Absent a waiver of sovereign immunity, the United States cannot be sued. Hutchinson v. United States, 677 F.2d 1322, 1327 (9th Cir. 1982).

Furthermore, 28 U.S.C. #2675 requires exhaustion of administrative remedies before suit may be filed in district court. Brady v. Smith, 656 F.2d 466, 468 (9th Cir. 1981). The district court properly[1] dismissed appellants' complaint for lack of subject matter jurisdiction.

As to his claim of wrongful disclosure, appellant has failed to contend or show that any of his tax returns or tax return information were disclosed by any Internal Revenue Service officer or employee. Appellant only contends that his tax return information was lost by IRS employees. Nothing in appellants' contentions

indicates disclosure beyond that permitted to Treasury Department employees by 26 U.S.C. #6103 (h) or to the taxpayer himself by 26 U.S.C. #6103 (e)(1)(A)(i). Furthermore, were appellant able to show wrongful disclosure, his claim would fail for failure to allege bad faith on the part of the government as required by 26 U.S.C. #7431(b), see Davidson v. Brady, 732 F.2d 552 (6th Cir. 1984) (interpreting 26 U.S.C. #7217 which was transferred to #7431 by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L 97-248, 96 Stat. 324). The district court properly dismissed appellants' complaint for failure to state a claim upon which reluef may be granted.

Finally, since appellant did not raise his consitutional claims (alleged violations of the Fourth, Fifth and Fourteenth Amendments) in the proceedings before the district court we may not address those issues here. Michael-Regan Co. v. Lindell, 527 F. 2d 653, 659 (9th Cir. 1975).

The district court properly granted the government's motion to dismiss.

AFFIRMED.

Judge Fletcher concurs in the result.

FILED

Cathy A. Catterson, Clerk

U.S. Court of Appeals

July 27, 1988

U.S. Supreme Court Civil No. _____

Propria Persona -- Hooker v. United States of America

Appellants' Certificate of Delivery

Notarized as required by the U.S. Supreme Court

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on November 2, 1988, I served the within and foregoing Appellant Jurisdictional Statement to the United States Supreme Court by mailing three (3) true and correct copies thereof to the Solicitor General of the United States, Washington, D.C. 20530.

Robert E. Hooker
November 2, 1988

STATE OF IDAHO)

) SS:

COUNTY OF CANYON)

On this 20th day of October, 1988, before me, the undersigned a Notary Public in and for said State, personally appeared ROBERT E. HOOKER and SHIRLEY K. HOOKER, known or identified to me to be the persons whose names are subscribed to the foregoing instrument as Appellants, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my offical seal the day and year in this certificate first above written.

Cara D. Rice

Notary Public for Idaho
Residing at Caldwell, Idaho
Middleton